

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FORTINET, INC.,

Plaintiff,

v.

FORESCOUT TECHNOLOGIES, INC.,

Defendant.

Case No. [20-cv-03343-EMC](#)

**ORDER GRANTING IN PART AND
DENYING IN PART [71] MOTION TO
DISMISS AND [88] MOTION FOR
ADMINISTRATIVE RELIEF**

Docket No. 71, 88

The parties' upcoming status conference, originally scheduled for June 10, 2021, at 10:30 AM is hereby continued until **June 17, 2021, at 10:30 AM**. As the parties have already submitted a joint case management statement, *see* Docket No. 91, they need not file an additional statement.

In anticipation of the status conference, the Court issues the following orders on two pending motions in this case. First, the Court **GRANTS in part** and **DENIES in part** Forescout's motion to dismiss Fortinet's Amended Complaint. *See* Docket No. 71. The Court denies the motion on the grounds that the '034 and '421 Patents claim ineligible subject matter under 35 U.S.C. § 101. The Court also denies the motion on the grounds that the Amended Complaint fails to state a claim for induced and/or contributory infringement. The Court grants the motion with respect to Fortinet's claim for willful infringement, without leave to amend. A fuller order on the motion will issue shortly.

Second, the Court **GRANTS in part** and **DENIES in part** Forescout's motion for administrative relief to reduce Fortinet's number of asserted patent claims. *See* Docket No. 88. The Court follows the Federal Circuit Advisory Council's Model Order Limiting Excess Patent Claims and Prior Art (2013), which provides that, before claim construction, a plaintiff

1 should limit its asserted claims to “no more than ten claims from each patent and no more than a
2 total of 32 claims.” *See* Federal Circuit Model Order ¶ 2, *available at*
3 <https://patentlyo.com/media/docs/2013/07/model-order-excess-claims.pdf> (accessed June 6, 2021);
4 *see also* Eastern District of Texas Model Order Focusing Patent Claims and Prior Art to Reduce
5 Costs ¶ 2, *available at*
6 <http://www.txed.uscourts.gov/sites/default/files/forms/ModelPatentOrder.pdf> (accessed June 6,
7 2021). The Court therefore orders Fortinet to reduce its total number of asserted claims in this
8 case to no more than 32 within 14 days of the issuance of this order. The parties should meet and
9 confer in advance of the upcoming status conference to discuss the number and identity of the
10 claims that Fortinet will assert at this stage of the proceedings, and to stipulate to any
11 modifications to this order that they may request.

12 This order disposes of Docket Nos. 71 and 88.

13 **IT IS SO ORDERED.**

14 Dated: June 7, 2021



EDWARD M. CHEN
United States District Judge